

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA**

VINYL INSTITUTE, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22-1089
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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**PETITIONER’S UNOPPOSED MOTION FOR EXTENSION OF TIME TO  
FILE A MOTION PURSUANT TO SECTION 19(b) OF THE TOXIC  
SUBSTANCES CONTROL ACT (15 U.S.C. § 2618)**

Pursuant to Fed. R. App. P. 27 and Circuit Rule 27, Petitioner Vinyl Institute, Inc. (Vinyl Institute) hereby requests an extension of time to file a motion pursuant to Section 19(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2618(b). As detailed below, Section 19(b) allows a petitioner to file a motion with the Court seeking leave to file additional documents and information in the administrative record with respect to an order issued by EPA pursuant to Section 4 of TSCA, 15 U.S.C. § 2603, that has been challenged in a petition for review.

Section 19(b) does not set forth a deadline for filing such a motion. However, in this Court’s Order dated May 24, 2022, all “procedural motions” must be filed by June 23, 2022. Doc. #1947775. Out of an abundance of caution, and

assuming a Section 19(b) motion would constitute a “procedural motion” under the Order,<sup>1</sup> the Vinyl Institute requests that the deadline for filing a Section 19(b) motion be extended to **July 22, 2022**, 14 days after the Order’s July 8, 2022 deadline for Respondent Environmental Protection Agency (EPA) to file the Certified Index. EPA has represented to undersigned counsel that it does not oppose this request for an extension of time, but reserves the right to oppose any Section 19(b) motion if filed by the amended deadline.

### ARGUMENT

On May 23, 2022, the Vinyl Institute filed a Petition for Review (Doc. #1947770) pursuant to TSCA Section 19(a), 15 U.S.C. § 2618(a), seeking review of EPA’s *Order Under Section 4(a)(2) of the Toxic Substances Control Act* (“Test Order”). The Test Order requires certain companies to conduct studies on 1,1,2-trichloroethane that EPA maintains are necessary to perform a risk evaluation under TSCA Section 6(b) (*see* 15 U.S.C. § 2605(b)). The Vinyl Institute operates a consortium comprised of the companies that would conduct the requested testing, and has as members companies subject to the Test Order.

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<sup>1</sup> This Court’s *Handbook of Practice and Procedures (Handbook)* defines a “procedural motion” to include “those that may affect the progress of the case through the Court, e.g., motions to intervene, motions to consolidate, motions to defer the appendix, motions to hold the case in abeyance, motions for stay, and motions to expedite.” *Handbook*, at VII.A.

As part of the judicial review process, TSCA Section 19(b) allows the Vinyl Institute to seek leave from this Court to submit additional information and data for inclusion in the Test Order's administrative record. This Court has authority to grant such a request if Section 19(b)'s requirements are otherwise met and to re-open the administrative proceedings so that EPA may consider the newly submitted materials and decide whether to modify or set aside the Test Order. To the extent that EPA amends the Test Order, this Court would then review the new order under the Petition for Review. *See* 15 U.S.C. § 2618(b).

In order to determine whether the Vinyl Institute will need to file a Section 19(b) motion, it must review the Certified Index submitted by EPA. The Certified Index, however, is not due until several weeks after the Vinyl Institute's June 23, 2022 deadline for filing procedural motions. As such, the Vinyl Institute will be unable, by the procedural motion deadline, to determine what documents and other information EPA deems part of the underlying record and whether it will ultimately need to seek leave to supplement the record.

Thus, assuming that a Section 19(b) motion constitutes a "procedural motion" under this Court's Order, and to make the Section 19(b) process as efficient as possible for the parties and this Court, the Vinyl Institute requests that the deadline for filing such a motion be extended for a reasonable time after EPA's July 8, 2022 due date for submitting the Certified Index. The Vinyl Institute

believes that 14 days should be sufficient to review the administrative record and prepare, if needed, a Section 19(b) motion.<sup>2</sup>

### **RELIEF REQUESTED**

The Vinyl Institute requests that this Court grant the unopposed extension of time and set a **July 22, 2022** deadline for filing any TSCA Section 19(b) motion.

Dated June 17, 2022

Respectfully submitted,

/s/ Eric P. Gotting  
Eric P. Gotting  
Peter L. de la Cruz  
Keller and Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
Phone: (202) 434-4100  
Facsimile: (202) 434-4646  
Email: [gotting@khlaw.com](mailto:gotting@khlaw.com)  
Email: [delacruz@khlaw.com](mailto:delacruz@khlaw.com)

*Counsel for Vinyl Institute, Inc.*

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<sup>2</sup> We also note this Court has yet to set a briefing schedule for this case and thus a short extension of time to file a Section 19(b) motion should not interfere with any merits briefing going forward.

**CERTIFICATE OF COMPLIANCE**

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 740 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman (14-point).

Dated: June 17, 2022

/s/ Eric P. Gotting

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2022, I electronically filed the forgoing document with the Court by using the CM/ECF system. All parties to the case have been served through the CM/ECF system.

/s Eric P. Gotting